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Attorneys for Plaintiff  
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 DAVID JOSEPH BUNEVACZ,

16 Defendant.

No. CR 22-175-DSF

GOVERNMENT'S OBJECTIONS TO  
PRESENTENCE INVESTIGATION REPORT

Hearing Date: November 21, 2022  
Hearing Time: 8:30 a.m.  
Location: Courtroom of the  
Hon. Dale S. Fischer

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18 Plaintiff United States of America, by and through its counsel  
19 of record, the United States Attorney for the Central District of  
20 California and Assistant United States Attorney Alexander B. Schwab,  
21 hereby files its objections to the presentence investigation report.

22 The government's objections are based on the attached memorandum

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1 of points and authorities, the files and records in this case, and  
2 such further evidence and argument as the Court may permit.

3 Dated: October 26, 2022

Respectfully submitted,

4 E. MARTIN ESTRADA  
United States Attorney

5 SCOTT M. GARRINGER  
6 Assistant United States Attorney  
7 Chief, Criminal Division

8 /s/  
ALEXANDER B. SCHWAB  
9 Assistant United States Attorney

10 Attorneys for Plaintiff  
11 UNITED STATES OF AMERICA  
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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

In a comprehensive and well-reasoned PSR, the United States Probation Office concludes that defendant's guideline range is 121 to 151 months' imprisonment -- the product of an offense level of 32 and a criminal history score of 0. In particular, the PSR determined that defendant's prior state securities felony conviction falls within the scope of the instant offense and therefore gives rise to no additional criminal history points.

The government agrees with the Probation Office's reasoning that defendant's state crime should be considered part of the fraud scheme for which he now faces sentencing. To the extent necessary, however, the government objects to the PSR on the grounds that defendant should also receive a two-level enhancement for obstructing or impeding the administration of justice under USSG § 3C1.1 and also receive an upward departure to criminal history Category II.

**II. STATEMENT OF FACTS****A. Defendant's Scheme**

During defendant's change of plea hearing, he agreed under oath to the following factual basis:

Beginning no later than in or about 2010, and continuing through at least on or about April 5, 2022, in Los Angeles County, within the Central District of California, and elsewhere, defendant, knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce and the mails, in connection with the purchase and sale of securities, used and employed manipulative and deceptive devices and contrivances by: (1) employing a scheme to defraud; (2) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (3) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers and

1 prospective purchasers of securities (the "victim-  
2 investors"), by causing materially false and fraudulent  
3 statements and material omissions to be made to the victim-  
4 investors about defendant's use of victim-investors'  
5 investments. Defendant knowingly and with the intent to  
6 defraud devised and participated in a scheme to defraud the  
7 victim-investors by means of false or fraudulent pretenses,  
8 representations, or promises, and omitted facts.

9 Defendant caused various business entities, which he  
10 represented to be involved in the cannabis industry, to be  
11 registered as limited liability companies or corporations  
12 with state secretaries of state (collectively, the  
13 "BUNEVACZ Cannabis Companies"). The BUNEVACZ Cannabis  
14 Companies included, for example, Holy Smokes Holdings LLC  
15 and Caesarbrutus LLC, which were Nevada limited liability  
16 companies, and CB Holding Group Corp., which was a Nevada  
17 corporation.

18 Defendant solicited funds from the victim-investors as  
19 investments in the BUNEVACZ Cannabis Companies by offering  
20 to sell the victim-investors securities issued by the  
21 BUNEVACZ Cannabis Companies. In doing so, defendant  
22 falsely and misleadingly represented to victim-investors  
23 that he and a third party ("Individual 1") had extensive  
24 experience in the cannabis industry and that the BUNEVACZ  
25 Cannabis Companies were in the business of selling vape  
26 pens containing cannabis products such as cannabidiol (also  
27 known as CBD) and tetrahydrocannabinol (also known as THC).  
28 Defendant also represented, promised, and maintained the  
pretense that funds from victim-investors would be used to  
finance business activities of the BUNEVACZ Cannabis  
Companies, such as the acquisition of raw materials used to  
manufacture cannabis vape pens. In reality, the BUNEVACZ  
Cannabis Companies were not successfully engaged in the  
manufacture and distribution of cannabis vape pens, and  
defendant used the majority of funds from victim-investors  
to finance his own lavish lifestyle and that of his family.

For example, on February 5, 2019, victim-investor I.C.  
transferred \$800,000, by means of interstate wire  
transfers, to a Bank of America account in the name of CB  
Holding Group Corp. in connection with a senior secured  
promissory note -- which constituted a security within the  
meaning of 15 U.S.C. § 78c(a)(10) -- that defendant had  
negotiated with I.C. Defendant caused a substantial  
portion of the funds obtained from I.C. to be transferred,  
along with other investor funds, to another bank account he  
controlled in the name "Grenco Science, Inc." Later in  
February 2019, defendant used \$100,000 from that account,  
almost all of which was the proceeds of defendant's scheme  
to defraud, to pay down a balance on his American Express  
credit card, which balance included two charges totaling  
more than \$65,000 for a luxury hotel in Cabo San Lucas.

1 To ensure victim-investors were not discouraged from  
2 investing in the BUNEVACZ Cannabis Companies, defendant  
3 concealed from them the material fact that he had been  
4 convicted in 2017 of Unlawful Sale of a Security, in  
5 violation of California Corporation Code §§ 25110,  
6 25540(A). On October 28, 2018, defendant also sent victim-  
7 investor S.S., by means of an email that traveled in  
8 foreign commerce from the United States to Canada, a  
9 falsified version of a settlement agreement reached with  
10 the victim of a prior fraud scheme, G.H., which made it  
11 appear that G.H. had agreed to pay defendant to resolve the  
12 lawsuit between defendant and G.H., when, in fact,  
13 defendant had agreed to pay G.H. to resolve the lawsuit.  
14 The counterfeit settlement agreement used the names and  
15 forged signatures of G.H. and G.H.'s attorney, F.M.

9 To create the false appearance that the BUNEVACZ  
10 Cannabis Companies were engaged in legitimate business  
11 activities, defendant also caused the registration of  
12 additional business entities with state agencies (the  
13 "Shell Companies") and caused bank accounts to be opened in  
14 the names of the BUNEVACZ Cannabis Companies and the Shell  
15 Companies through which he funneled the proceeds of his  
16 fraudulent scheme (the "Funnel Accounts"). For many of the  
17 Shell Companies, defendant selected names intentionally  
18 similar or identical to those of real businesses,  
19 particularly cannabis businesses, such as Grenco Science  
20 and SaveurVape. Defendant then used these same business  
21 names to generate fraudulent invoices, purchase orders, and  
22 bank statements, which he provided to the victim-investors  
23 to support his false claims that the BUNEVACZ Cannabis  
24 Companies were successfully engaged in manufacturing and  
25 distributing cannabis vape pens. To conceal his own  
26 control of the Shell Companies and Funnel Accounts,  
27 defendant caused other individuals, including Individual 1,  
28 to be publicly listed as the corporate officers of the  
Shell Companies and the authorized signers on many of the  
Funnel Accounts.

21 In some instances, defendant refunded victim-investors  
22 some or all of their investments, which helped maintain the  
23 illusion that the BUNEVACZ Cannabis Companies were  
24 legitimate businesses and to discourage the victim-  
25 investors from taking legal action against him or the  
26 BUNEVACZ Cannabis Companies.

24 Operating through the BUNEVACZ Cannabis Companies,  
25 defendant raised between approximately \$37,166,737 and  
26 \$45,068,227 from more than ten victim-investors and caused  
27 losses of at least \$28,409,112.

27 (Plea Agreement ¶ 15, at 11-14).

1           **B. Defendant's State Securities Convictions**

2           As noted above, defendant was convicted in Los Angeles Superior  
3 Court of felony securities offenses in 2017, having previously been  
4 charged in 2012. (PSR ¶ 75, at 15). While the sentence included  
5 three years of probation with a condition that he serve 360 days in  
6 jail, defendant was permitted to have the jail term permanently  
7 stayed if he paid \$273,000 in restitution to two victims. (Id.).  
8 The the Probation Office concluded that defendant "used the proceeds  
9 from the instant offense to satisfy the restitution requirements in  
10 this [state] docket, so that he would not be subjected to a custodial  
11 sentence." (Id. at 16). In other words, defendant was rewarded with  
12 a lighter sentence by using other victims' funds to make Ponzi  
13 payments.

14           The PSR also documents defendant's failure to fully comply with  
15 the terms of his probationary sentence. On May 3, 2019, he failed to  
16 appear in court at a hearing to consider a possible probation  
17 violation; two months later, he admitted to the violation but was  
18 allowed to continue probation "under the same terms and conditions."  
19 (Id.).

20           **III. ARGUMENT**

21           Defendant's state securities felony conviction resulted in a  
22 sentence in 2017 of three years' probation and a suspended sentence  
23 of 360 days in jail. (PSR ¶ 75, at 15). Ordinarily, this prior  
24 conviction would result in three criminal history points: one point  
25 for a sentence of less than sixty days, USSG § 4A1.1(c); and two  
26 additional points because defendant committed the instant offense  
27 while serving his probationary sentence, USSG § 4A1.1(d). The PSR  
28 concludes, however, that "[t]his conviction is considered relevant

1 conduct to the instant offense under the parameters set forth in USSG  
2 §1B1.3," and so, "[p]ursuant to USSG §4A1.2(a)(1) and Application  
3 Note 1, this conviction is not considered a prior sentence and does  
4 not garner criminal history points." (PSR ¶ 75, at 16).

5 The government does not dispute this conclusion, which reflects  
6 a faithful application of the Sentencing Guidelines. It does,  
7 however, raise two additional Sentencing Guidelines issues not  
8 otherwise addressed in the PSR: First, to the extent defendant's  
9 conduct surrounding his state securities conviction falls within the  
10 scope of the instant offense, it also merits a two-level enhancement  
11 for obstructing or impeding the administration of justice under USSG  
12 § 3C1.1. Second, even though defendant's prior felony conviction  
13 does not give rise to criminal history points under § 4A1.1,  
14 defendant's ongoing criminal conduct while under a state-imposed  
15 sentence of probation offers a straightforward basis for an upward  
16 departure under USSG § 4A1.3(a)(2) for an understated criminal  
17 history.<sup>1</sup>

18 **A. Defendant Should Receive a Two-Level Enhancement for**  
19 **Obstructing or Impeding the Administration of Justice**

20 Treating defendant's conduct surrounding his state securities  
21 conviction as part of the instant offense means that he also merits  
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23 <sup>1</sup> As part of the plea agreement, the government has agreed to  
24 "[r]ecommend that defendant be sentenced to a term of imprisonment no  
25 higher than the low end of the applicable Sentencing Guidelines  
26 range, provided that the offense level used by the Court to determine  
27 that range is 32 or higher and provided that the Court does not  
28 depart downward in offense level or criminal history category."  
(Plea Agreement ¶ 4(e), at 6). The government is not yet  
recommending a particular sentence. Yet, to be clear, so long as  
defendant's total offense level is at least 32, the government will  
recommend a sentence no greater than the low end of defendant's  
guideline range even if the Court rejects the government's  
calculation of defendant's sentencing guidelines.

1 an enhancement for his obstructive conduct in connection with his  
2 state sentencing. The Sentencing Guidelines provide:

3 If (1) the defendant willfully obstructed or impeded, or  
4 attempted to obstruct or impede, the administration of  
5 justice with respect to the investigation, prosecution, or  
6 sentencing of the instant offense of conviction, and (2)  
7 the obstructive conduct related to (A) the defendant's  
8 offense of conviction and any relevant conduct; or (B) a  
9 closely related offense, increase the offense level by 2  
10 levels.

11 USSG § 3C1.1. As described in the PSR, defendant avoided a custodial  
12 sentence in state court by making restitution in a Ponzi-like  
13 fashion, using new criminal proceeds to repay earlier victims of his  
14 scheme:

15 It should be noted that during the time of Bunevacz's  
16 probation and the period that he was making restitution  
17 payments, he had no lawful form of income, aside from the  
18 income he was receiving from the instant offense. Upon of  
19 review of his financial records, it appears that Bunevacz  
20 was making restitution payments by securing additional  
21 investments from new victims in the instant offense.  
22 Bunevacz thus used the proceeds from the instant offense to  
23 satisfy the restitution requirements in this docket, so  
24 that he would not be subjected to a custodial sentence.

25 (PSR ¶ 75, at 16). Thus, to the extent defendant's state conviction  
26 falls within the scope of the instant offense, then the sentencing  
27 for his state offense was part of "the instant offense of  
28 conviction," and defendant "willfully obstructed or impeded" the  
29 sentencing by committing additional crimes to create the false  
30 appearance of making bona fide restitution payments. Cf. USSG  
31 § 3C1.1, comment., (n.4(F)) (including in its "non-exhaustive list of  
32 examples" of covered conduct, "providing materially false information  
33 to a judge").

34 Finally, while the Sentencing Guidelines prescribes that  
35 "[c]onduct resulting in an enhancement under §3C1.1 . . . ordinarily



1 indicates that the defendant has not accepted responsibility for his  
2 criminal conduct," the government agrees this is one of those  
3 "extraordinary cases" in which adjustments under both § 3C1.1 and  
4 § 3E1.1 apply. USSG § 3E1.1, comment. (n.4). Because this is the  
5 unusual case where part of the underlying conduct includes state  
6 criminal proceedings and the obstructive conduct relates specifically  
7 to those proceedings, defendant's timely acknowledgement of guilt in  
8 his federal prosecution still warrants a three-level reduction so  
9 long as he continues to accept responsibility through the time of  
10 sentencing.

11 **B. Defendant's Further Criminal Behavior While Serving a State**  
12 **Probationary Sentence Warrants an Upward Departure in His**  
**Criminal History Category**

13 Because defendant's state conviction constitutes a "prior  
14 sentence" for "conduct that is part of the instant offense," it does  
15 not count toward defendant's criminal history score. See USSG  
16 § 4A1.2, comment. (n.1). Nevertheless, defendant's criminal behavior  
17 while on probation qualifies for an upward departure in his criminal  
18 history score. See USSG § 4A1.3(a)(1) ("If reliable information  
19 indicates that the defendant's criminal history category  
20 substantially under-represents the seriousness of the defendant's  
21 criminal history or the likelihood that the defendant will commit  
22 other crimes, an upward departure may be warranted.").

23 The Sentencing Guidelines offers a non-exhaustive list of  
24 examples of circumstances warranting such an upward departure,  
25 including "[p]rior sentence(s) not used in computing the criminal  
26 history category." USSG § 4A1.3(a)(2)(A). To the extent the  
27 limitations on what qualifies as a "prior sentence" in the  
28 application notes to § 4A1.2 also applies to § 4A1.3, the government

1 agrees that the Court should not depart upward to reflect defendant's  
2 conviction for his state securities offense. See United States v.  
3 Hunerlach, 258 F.3d 1282, 1286-87 (11th Cir. 2001); accord United  
4 States v. Stephens, 373 F. App'x 457, 461 (5th Cir. 2010). But the  
5 text of the Sentencing Guidelines does not similarly limit an upward  
6 departure for "commit[ing] the instant offense while under any  
7 criminal justice sentence" where that sentence arose from "conduct  
8 that is part of the instant offense." Much like an upward departure  
9 for "[p]rior similar misconduct established by a civil adjudication  
10 or by a failure to comply with an administrative order" or misconduct  
11 occurring when "the defendant was pending trial or sentencing on  
12 another charge at the time of the instant offense," holding defendant  
13 accountable for his criminal conduct while on probation acknowledges  
14 defendant's risk of recidivism and lack of amenability to court-  
15 imposed supervision. As the Ninth Circuit has concluded, "The  
16 criminal history factors were adopted to address the concerns of just  
17 punishment and deterrence. . . . These factors reflect the frequency,  
18 seriousness and recency of the prior criminal history, and were  
19 selected because of their empirical relationship to the likelihood of  
20 future criminal behavior." United States v. McCrudden, 894 F.2d 338,  
21 339 (9th Cir. 1990).

22 The Sentencing Guidelines provides that, when an upward  
23 departure is merited for an underrepresented criminal history, "the  
24 court shall determine the extent of a departure under this subsection  
25 by using, as a reference, the criminal history category applicable to  
26 defendants whose criminal history or likelihood to recidivate most  
27 closely resembles that of the defendant's." USSG § 4A1.3(a)(4)(A).  
28 Setting aside defendant's state conviction itself as an extension of

1 his broader fraud scheme, his misdeeds while on state probation still  
2 bespeak a greater risk of recidivism that a defendant's criminal  
3 history score is intended to capture.

4 An upward departure is appropriate "where the defendant's record  
5 is 'significantly more serious' than that of other defendants in the  
6 same category." United States v. Hernandez-Vasquez, 884 F.2d 1314,  
7 1315 (9th Cir. 1989). Defendant was not only convicted of a state  
8 securities offense but continued to commit securities fraud while  
9 serving his sentence for that crime. He has therefore demonstrated  
10 that he is very different from the typical offender who falls in  
11 Category I, who has a spotless or near-spotless record, and instead  
12 displays many of the signs of recidivism typical of those in higher  
13 criminal history categories. Because defendant would ordinarily earn  
14 two criminal history points under USSG § 4A1.1(d) for "commit[ing]  
15 the instant offense while under any criminal justice sentence," the  
16 Court should therefore find that defendant's criminal history  
17 warrants an upward departure to Criminal History Category II, which  
18 otherwise applies to defendants with two criminal history points.

19 Moreover, applying an upward departure to defendant's criminal  
20 history is also appropriate in light of his conduct while previously  
21 residing in the Philippines. As detailed in both the complaint and  
22 PSR, defendant "and his wife previously lived in the Philippines  
23 while operating a 'high-end beauty clinic' called 'Beverly Hills 6750  
24 Cosmetic Surgery and Skin Institute.'<sup>2</sup> Press reports allege that  
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27 <sup>2</sup> Jo-Ann Q. Maglipon, "PEP SCOOP: David Bunevacz and Jessica  
28 Rodriguez Booted Out of Beverly Hills 6750," Philippine Entertainment  
Portal (Dec. 13, 2007), available at  
<https://www.pep.ph/lifestyle/14733/pep-scoop-david-bunevacz-and-jessica-rodriguez-booted-out-of-beverly-hills-6750>.

1 [defendant] and his wife left the Philippines for the United States  
2 'amidst allegations they scammed their business partners of huge  
3 amounts of money' in connection with 'an elite cosmetic surgery  
4 clinic catering to Manila's high society.'<sup>3</sup> According to the report,  
5 '[i]nsiders at the clinic say the couple has an insatiable appetite  
6 for the good life, and suspicions from their business partners grew  
7 after several high profile purchases were made known to the public,  
8 including a new BMW X5,' which defendant gave his wife as an  
9 'anniversary gift.'" (See PSR ¶ 81, at 16-17; Complaint ¶ 8, at 3-  
10 4).

#### 11 **IV. CONCLUSION**

12 For the foregoing reasons, the government respectfully requests  
13 that this Court conclude that defendant's offense conduct warrants a  
14 two-level enhancement for obstruction of justice and an upward  
15 departure to Criminal History Category II. The result would be a  
16 guideline range of 168 to 210 months' imprisonment.  
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28 <sup>3</sup> Vincent Anthony Garcia, "Scamming Celeb Couple," Gulf News  
(Dec. 23, 2007), available at <https://gulfnews.com/general/scamming-celeb-couple-1.219108>.